

## Szelag, Matthew

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**From:** Opalski, Dan  
**Sent:** Monday, March 17, 2014 10:35 AM  
**To:** ksus461@ecy.wa.gov  
**Subject:** FW: Listing and EJ Discussion

Kelly –

A slight addendum...

Consistent with our previous discussions, I wanted to confirm that Oregon DEQ has relatively recently proposed 303d listings for mercury based upon fish tissue concentrations (not relying on an OHA advisory).

I am understanding that some communication is now out on the end of March date slipping. I'd appreciate a chance to check in soon on this.

Thx. DanO.

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**From:** Opalski, Dan  
**Sent:** Saturday, March 15, 2014 12:26 AM  
**To:** 'Susewind, Kelly (ECY)'  
**Subject:** RE: Listing and EJ Discussion

Kelly –

Sorry I didn't get more back to you on the listing sooner. Here is what was reported to me:

DEQ has only listed impaired waters for fish tissue contamination when the Oregon Health Authority (OHA, formerly DoH) has issued fish advisories, i.e., DEQ has not done any independent review of fish tissue data for listing purposes, even for mercury, which is shown as a fish tissue criterion in their WQS.

OHA calculates their fish consumption advisories for a maximum of four, eight-ounce, meals per month which translates into 30.25 grams of fish per day, much lower than the 175 grams per day upon which the Oregon toxics criteria for human health are based.

So best I can tell this tracks pretty well with your understanding. However, I would say that because OHA's advisories, which trigger 303d listings, are based on fish tissue data, it is accurate to say that these listings are based upon tissue data. But it remains notable that DEQ does not independently review the tissue data for these purposes, nor does there appear to be any explicit translation of the tissue concentrations to their water column standards, and, finally, the fish consumption rate used by OHA is quite a ways off from the rate underlying their standards.

DanO.

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**From:** Susewind, Kelly (ECY) [<mailto:KSUS461@ECY.WA.GOV>]  
**Sent:** Tuesday, March 11, 2014 1:41 PM  
**To:** Opalski, Dan  
**Cc:** Bellon, Maia (ECY)  
**Subject:** Listing and EJ Discussion

Hey Dan

Did a little looking on my own following today's discussion.

Listing:

The 2012 Oregon assessment states that:

- New and revised human health criteria apply to pollutants **in the water column** except for methyl mercury.....
- Category 5 listings require two or more samples not meeting the most stringent applicable criterion of a specific substance **in the water**, or
- A fish consumption advisory issued for a specific water body based on pollutants in fish tissue

We acknowledged that Oregon lists based on fish advisories, but that is far different than saying they do listing based on tissue. A quick perusal of Oregon's fish advisories only shows a few advisories generally based on mercury and PCBs.

We've also been contacted by DEQ staff regarding our listing policy because they are getting pressure to list based on tissue "like Washington."

Is there more information that I am missing?

EJ

I have a copy of the document: "EPA Policy on Environmental Justice for Tribes and Indigenous Peoples." It's a pre-decisional working draft dated November 14, 2012.

Is that the document Dennis referred to?

The only real pertinent language I could find in that document was:

**4. THE EPA ASSESSES THE POTENTIAL FOR DISPROPORTIONATELY HIGH AND ADVERSE HUMAN HEALTH OR ENVIRONMENTAL EFFECTS ON TRIBES OR INDIGENOUS COMMUNITIES.**

- a. The EPA considers both quantitative and qualitative information about the potential disproportionately high and adverse human health or environmental effects pertaining to, and/or provided by, tribes or indigenous stakeholders.
- b. The EPA works to understand Traditional Ecological Knowledge and its role in protecting public health and the environment, and to understand community definitions of health and the environment.

As we discussed, tribal members, and anyone eating high amounts of fish, are at higher risk. They are at a risk exactly proportionate to the consumption rate and will be at the same ratio (proportion) regardless of where the rule lands. Interpreting this section of the policy to mean that they can't be at a higher risk would frustrate the entire system the HHC equations are based on and make it impossible to comply.

Is there a statement somewhere that one in a million risk rate is the baseline to establish environmental justice? Or that a higher risk rate is inherent in the approach, but establishes some criteria to define "disproportionately high and adverse effects?"

I'm not trying to be argumentative, but we are getting to the end of a very contentious process, and I really need to understand these concepts in order to advise decision makers.

Thanks

Kelly